

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THOMAS WILLIAM SINCLAIR RICHEY,

NO. 4:14-cv-05011-EFS

Plaintiff,

v.

BERNARD WARNER, STEVEN SINCLAR,
OPM OLIVER-ESTES.

ORDER DENYING LEAVE TO PROCEED IN
FORMA PAUPERIS AND DISMISSING
ACTION

Defendants.

By Order filed February 12, 2014, ECF No. 7, the Court directed Mr. Richey to show cause why he should not be precluded from proceeding *in forma pauperis* under 28 U.S.C. § 1915(g) ("section 1915(g)"), the "three strikes" provision of the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1995). Plaintiff did not respond and has filed nothing further in this action.

Court records from the Western District of Washington¹ show that Mr. Richey has filed two civil actions that were dismissed for failure

¹ U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (taking notice of judicial proceedings in another court); see also Barron v. Reich, 13 F.3d

1 to state a claim and one appeal that was found frivolous. In *Richey*
 2 v. *Thaut*, 3:11-cv-05680-RBL, the District Court ordered on March 26,
 3 2012, "Plaintiff's claims are Dismissed without Prejudice for failure
 4 to exhaust and that the dismissal count as a strike pursuant to 28
 5 U.S.C. § 1915(g)," ECF No. 24. The Ninth Circuit (cause number 12-
 6 35254) affirmed and issued its Mandate on March 14, 2013. In a second
 7 case titled, *Richey v. Thaut*, 3:11-cv-05755-BHS, the District Court
 8 granted Defendant's Motion to Dismiss First Amendment claims for
 9 failure to state a claim upon which relief may be granted on May 16,
 10 2012, ECF No. 27. The Ninth Circuit (cause number 12-35632) found
 11 "the appeal is frivolous," and issued its Mandate on November 15,
 12 2012.

13 The allegations of his Complaint, including a custody demotion
 14 for failure to provide a urine sample which resulted in the loss of
 15 privileges, do not show an "imminent danger of serious physical
 16 injury" which would excuse the preclusive effects of 28 U.S.C. §
 17 1915(g). Therefore, **IT IS ORDERED** Plaintiff's application to proceed
 18 *in forma pauperis* is **DENIED**.

19 Furthermore, having failed to pay the applicable fee of \$400.00
 20 (\$350.00 filing fee plus \$50.00 administrative fee) within the time
 21 allotted by the Court, **IT IS ORDERED** this action is **DISMISSED** without
 22

23
 24 1370, 1377 (9th Cir. 1994) (matters subject to judicial notice may
 25 be considered under Fed. R. Civ. P. 12(b)(6)).
 26

1 prejudice for failure to comply with 28 U.S.C. § 1914. **IT IS FURTHER**
2 **ORDERED** all pending motions are **DENIED as moot**.

3 **IT IS SO ORDERED.** The District Court Executive is directed to
4 enter this Order, enter judgment, forward a copy to Plaintiff, and
5 close the file. The Court certifies any appeal of this dismissal
6 would not be taken in good faith.

7 **DATED** this 24th day of March 2014.

8
9

s/ Edward F. Shea
10 EDWARD F. SHEA
Senior United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26